

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LAURA MICHELLE GARCIA,

Plaintiff,

v.

CAROLYN W. COLVIN,
Acting Commissioner of Social Security,

Defendant.

Case No. CV 16-00652-JEM

MEMORANDUM OPINION AND ORDER
REVERSING DECISION OF THE
COMMISSIONER OF SOCIAL SECURITY

PROCEEDINGS

On January 29, 2016, Laura Michelle Garcia ("Plaintiff" or "Claimant") filed a complaint seeking review of the decision by the Commissioner of Social Security ("Commissioner") denying Plaintiff's application for Social Security Disability Insurance benefits. The Commissioner filed an Answer on May 16, 2016. On July 29, 2016, the parties filed a Joint Stipulation ("JS"). The matter is now ready for decision.

Pursuant to 28 U.S.C. § 636(c), both parties consented to proceed before this Magistrate Judge. After reviewing the pleadings, transcripts, and administrative record ("AR"), the Court concludes that the Commissioner's decision must be reversed and this case remanded for further proceedings in accordance with this Memorandum Opinion and Order and with law.

BACKGROUND

Plaintiff is a 49-year-old female who applied for Social Security Disability Insurance benefits on November 13, 2012, alleging disability beginning April 28, 2012. (AR 15.) The ALJ determined that Plaintiff had not engaged in substantial gainful activity since April 28, 2012, the alleged onset date. (AR 17.)

Plaintiff's claim was denied initially on June 7, 2013. (AR 15.) Plaintiff filed a timely request for hearing, which was held before Administrative Law Judge ("ALJ") Lawrence D. Wheeler on May 14, 2014 in West Los Angeles, California. (AR 15.) Plaintiff appeared and testified at the hearing and was represented by Richard Woolworth, a non-attorney representative. (AR 15.) Vocational expert ("VE") June C. Hagen also appeared and testified at the hearing. (AR 15.)

The ALJ issued an unfavorable decision on June 2, 2014. (AR 15-24.) The Appeals Council denied review on December 4, 2015. (AR 1-3.)

DISPUTED ISSUES

As reflected in the Joint Stipulation, Plaintiff raises the following disputed issues as grounds for reversal and remand:

1. Whether the ALJ properly weighed the opinions of a treating physician.
2. Whether the ALJ properly found Laura Garcia capable of performing the identified work at Step-5.

STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), this Court reviews the ALJ's decision to determine whether the ALJ's findings are supported by substantial evidence and free of legal error. Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996); see also DeLorme v. Sullivan, 924 F.2d 841, 846 (9th Cir. 1991) (ALJ's disability determination must be supported by substantial evidence and based on the proper legal standards).

Substantial evidence means "more than a mere scintilla," but less than a preponderance." Saelee v. Chater, 94 F.3d 520, 521-22 (9th Cir. 1996) (quoting Richardson v. Perales, 402 U.S. 389, 401 (1971)). Substantial evidence is "such relevant evidence as a

1 reasonable mind might accept as adequate to support a conclusion.” Richardson, 402 U.S. at
2 401 (internal quotation marks and citation omitted).

3 This Court must review the record as a whole and consider adverse as well as
4 supporting evidence. Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006). Where
5 evidence is susceptible to more than one rational interpretation, the ALJ’s decision must be
6 upheld. Morgan v. Comm’r of the Soc. Sec. Admin., 169 F.3d 595, 599 (9th Cir. 1999).
7 “However, a reviewing court must consider the entire record as a whole and may not affirm
8 simply by isolating a ‘specific quantum of supporting evidence.’” Robbins, 466 F.3d at 882
9 (quoting Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989)); see also Orn v. Astrue, 495
10 F.3d 625, 630 (9th Cir. 2007).

11 THE SEQUENTIAL EVALUATION

12 The Social Security Act defines disability as the “inability to engage in any substantial
13 gainful activity by reason of any medically determinable physical or mental impairment which
14 can be expected to result in death or . . . can be expected to last for a continuous period of not
15 less than 12 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Commissioner has
16 established a five-step sequential process to determine whether a claimant is disabled. 20
17 C.F.R. §§ 404.1520, 416.920.

18 The first step is to determine whether the claimant is presently engaging in substantial
19 gainful activity. Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). If the claimant is engaging
20 in substantial gainful activity, disability benefits will be denied. Bowen v. Yuckert, 482 U.S. 137,
21 140 (1987). Second, the ALJ must determine whether the claimant has a severe impairment or
22 combination of impairments. Parra, 481 F.3d at 746. An impairment is not severe if it does not
23 significantly limit the claimant’s ability to work. Smolen, 80 F.3d at 1290. Third, the ALJ must
24 determine whether the impairment is listed, or equivalent to an impairment listed, in 20 C.F.R.
25 Pt. 404, Subpt. P, Appendix I of the regulations. Parra, 481 F.3d at 746. If the impairment
26 meets or equals one of the listed impairments, the claimant is presumptively disabled. Bowen,
27 482 U.S. at 141. Fourth, the ALJ must determine whether the impairment prevents the
28 claimant from doing past relevant work. Pinto v. Massanari, 249 F.3d 840, 844-45 (9th Cir.

1 2001). Before making the step four determination, the ALJ first must determine the claimant's
2 residual functional capacity ("RFC"). 20 C.F.R. § 416.920(e). The RFC is "the most [one] can
3 still do despite [his or her] limitations" and represents an assessment "based on all the relevant
4 evidence." 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1). The RFC must consider all of the
5 claimant's impairments, including those that are not severe. 20 C.F.R. §§ 416.920(e),
6 416.945(a)(2); Social Security Ruling ("SSR") 96-8p.

7 If the claimant cannot perform his or her past relevant work or has no past relevant work,
8 the ALJ proceeds to the fifth step and must determine whether the impairment prevents the
9 claimant from performing any other substantial gainful activity. Moore v. Apfel, 216 F.3d 864,
10 869 (9th Cir. 2000). The claimant bears the burden of proving steps one through four,
11 consistent with the general rule that at all times the burden is on the claimant to establish his or
12 her entitlement to benefits. Parra, 481 F.3d at 746. Once this prima facie case is established
13 by the claimant, the burden shifts to the Commissioner to show that the claimant may perform
14 other gainful activity. Lounsbury v. Barnhart, 468 F.3d 1111, 1114 (9th Cir. 2006). To support
15 a finding that a claimant is not disabled at step five, the Commissioner must provide evidence
16 demonstrating that other work exists in significant numbers in the national economy that the
17 claimant can do, given his or her RFC, age, education, and work experience. 20 C.F.R.
18 § 416.912(g). If the Commissioner cannot meet this burden, then the claimant is disabled and
19 entitled to benefits. Id.

20 THE ALJ DECISION

21 In this case, the ALJ determined at step one of the sequential process that Plaintiff has
22 not engaged in substantial gainful activity since April 28, 2012, the alleged onset date. (AR
23 17.)

24 At step two, the ALJ determined that Plaintiff has the following medically determinable
25 severe impairments: diabetes mellitus; morbid obesity with history of gastric bypass; a major
26 depressive disorder; and an anxiety disorder. (AR 17.)

1 At step three, the ALJ determined that Plaintiff does not have an impairment or
2 combination of impairments that meets or medically equals the severity of one of the listed
3 impairments. (AR 17-18.)

4 The ALJ then found that Plaintiff has the RFC to perform medium work as defined in 20
5 C.F.R. § 404.1567(c) except for work involving more than simple repetitive tasks; any public
6 contact; or more than occasional peer contact. (AR 18-22.) In determining the above RFC, the
7 ALJ made an adverse credibility determination, which Plaintiff does not challenge here. (AR
8 22.)

9 At step four, the ALJ found that Plaintiff is unable to perform her past relevant work as a
10 systems analyst and claims examiner. (AR 22.) The ALJ, however, also found that,
11 considering Claimant's age, education, work experience, and RFC, there are jobs that exist in
12 significant numbers in the national economy that Claimant can perform, including the jobs of
13 hand packager, machine packager, industrial cleaner, housekeeping cleaner, marker, routing
14 clerk, addresser, and microfilm document preparer. (AR 23-24.)

15 Consequently, the ALJ found that Claimant was not disabled, within the meaning of the
16 Social Security Act. (AR 24.)

17 DISCUSSION

18 The ALJ decision must be reversed and remanded. The ALJ's RFC is not supported by
19 substantial evidence. The ALJ's fifth step determination that there are jobs in the national
20 economy that Plaintiff is capable of performing also is not supported by substantial evidence.

21 I. THE ALJ'S RFC IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

22 Plaintiff contends that the ALJ erred in rejecting the limitations assessed by Dr. Marcia
23 Lamm, Plaintiff's workers' compensation psychologist. The Court agrees.

24 Plaintiff also contends that the ALJ failed to explain his rejection of limitations assessed
25 by State Agency reviewing physician Dr. David Deaver, rendering the ALJ's RFC and fifth step
26 determination unsupported by substantial evidence. The Court agrees.

A. Relevant Federal Law

The ALJ's RFC is not a medical determination but an administrative finding or legal decision reserved to the Commissioner based on consideration of all the relevant evidence, including medical evidence, lay witnesses, and subjective symptoms. See SSR 96-5p; 20 C.F.R. § 1527(e). In determining a claimant's RFC, an ALJ must consider all relevant evidence in the record, including medical records, lay evidence, and the effects of symptoms, including pain reasonably attributable to the medical condition. Robbins, 446 F.3d at 883.

In evaluating medical opinions, the case law and regulations distinguish among the opinions of three types of physicians: (1) those who treat the claimant (treating physicians); (2) those who examine but do not treat the claimant (examining physicians); and (3) those who neither examine nor treat the claimant (non-examining, or consulting, physicians). See 20 C.F.R. §§ 404.1527, 416.927; see also Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995). In general, an ALJ must accord special weight to a treating physician's opinion because a treating physician "is employed to cure and has a greater opportunity to know and observe the patient as an individual." Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989) (citation omitted). If a treating source's opinion on the issues of the nature and severity of a claimant's impairments is well-supported by medically acceptable clinical and laboratory diagnostic techniques, and is not inconsistent with other substantial evidence in the case record, the ALJ must give it "controlling weight." 20 C.F.R. §§ 404.1527(d)(2), 416.927(d)(2).

Where a treating doctor's opinion is not contradicted by another doctor, it may be rejected only for "clear and convincing" reasons. Lester, 81 F.3d at 830. However, if the treating physician's opinion is contradicted by another doctor, such as an examining physician, the ALJ may reject the treating physician's opinion by providing specific, legitimate reasons, supported by substantial evidence in the record. Lester, 81 F.3d at 830-31; see also Orn, 495 F.3d at 632; Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002). Where a treating physician's opinion is contradicted by an examining professional's opinion, the Commissioner may resolve the conflict by relying on the examining physician's opinion if the examining physician's opinion is supported by different, independent clinical findings. See Andrews v.

1 Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995); Orn, 495 F.3d at 632. Similarly, to reject an
2 uncontradicted opinion of an examining physician, an ALJ must provide clear and convincing
3 reasons. Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9th Cir. 2005). If an examining physician's
4 opinion is contradicted by another physician's opinion, an ALJ must provide specific and
5 legitimate reasons to reject it. Id. However, "[t]he opinion of a non-examining physician cannot
6 by itself constitute substantial evidence that justifies the rejection of the opinion of either an
7 examining physician or a treating physician"; such an opinion may serve as substantial
8 evidence only when it is consistent with and supported by other independent evidence in the
9 record. Lester, 81 F.3d at 830-31; Morgan, 169 F.3d at 600.

10 **B. Analysis**

11 1. Dr. Marcia Lamm

12 Plaintiff suffers from diabetes, morbid obesity, major depressive disorder, and an anxiety
13 disorder. (AR 17.) She claims she cannot concentrate for more than 5 to 10 minutes and
14 cannot be around other people without having severe anxiety. (AR 19.) She has panic attacks
15 and depression and has difficulty sleeping. (AR 19.) Claimant contends she stays home all
16 day watching television and reading. (AR 22.) Nonetheless, the ALJ found Plaintiff was not
17 precluded from all work, but limited to simple repetitive tasks without public contact and only
18 occasional peer contact. (AR 18.)

19 Plaintiff was evaluated by psychologist Dr. Marcia Lamm on October 26, 2012, who
20 diagnosed moderate to severe major depressive disorder with anxiety. (AR 20.) In a
21 subsequent report dated July 24, 2013, Dr. Lamm reported marked to severe limitations in her
22 ability to perform all mental and emotional work-related functions. (AR 21, 22.) More
23 specifically, Dr. Lamm found Claimant to have marked limitations in the ability to remember
24 locations and work-like procedures, ability to understand, remember and carry out detailed
25 instructions, the ability to maintain concentration for extended periods, the ability to perform
26 activities within a schedule and the ability to complete a normal workday and work week without
27 interruptions from psychologically based symptoms. (AR 412-413.) Dr. Lamm also found
28 Plaintiff to have marked limitations in activities of daily living, social functioning, and

1 concentration, persistence and pace with four or more episodes of decompensation, sufficient
2 to meet the listing requirements of 12.04 and 12.06 (AR 21, 409), which would preclude all
3 work.

4 The ALJ, however, rejected Dr. Lamm's July 24, 2013 assessment because it is
5 inconsistent with her treatment notes that "clearly show the claimant has made significant
6 progress in therapy." (AR 22.) An ALJ may reject a physician's opinion that is not supported
7 by his or her treatment notes. Batson v. Comm'r, 359 F.3d 1190, 1195 and n.3 (9th Cir. 2004);
8 Bayliss, 427 F.3d at 1216. Here, the ALJ cited a report dated February 28, 2013 by Dr. Lamm
9 indicating Claimant was making a lot of progress in treatment and that her mental status is
10 "improving." (AR 20.) On April 17, 2013, Dr. Lamm noted that Claimant was "continuing to
11 make progress in treatment with increased coping and stress management, and reduced
12 depressive symptomatology." (AR 20.) On November 25, 2013, Dr. Lamm noted that Claimant
13 "has been making progress in outpatient psychotherapy with improvements in affect and mood
14 observed on this date." (AR 21.) There is plainly an inconsistency between Dr. Lamm's July
15 24, 2013 assessment and her November 25, 2013 treatment note. Also missing from Dr.
16 Lamm's treatment notes is any support for her assessment that there have been more than 4
17 episodes of decompensation of extended duration. (AR 409.) The ALJ found that there was
18 no evidence the Claimant had any episodes of mental decompensation of extended duration.
19 (AR 18.) Plaintiff does not challenge the ALJ's finding or cite to any evidence of mental
20 decompensation of extended duration.

21 Plaintiff, moreover, does not challenge the ALJ's adverse credibility decision. (AR 22.)
22 The ALJ found that Claimant had engaged in daily activities that were inconsistent with her
23 subjective symptom allegations. (AR 22.) Claimant herself indicated she could prepare meals,
24 perform household chores, drive a car, and go shopping. (AR 22.) She drives herself to her
25 psychologist's appointments and sometimes goes grocery shopping by herself. (AR 19.) An
26 ALJ may reject a physician's opinion that is contradicted by a claimant's own admitted or
27 observed abilities. Bayliss, 427 F.3d at 1216.

1 The ALJ's rejection of Dr. Lamm's July 24, 2013 assessment is supported by the
 2 opinions of State agency medical consultants who found that Claimant was capable of light
 3 work not involving more than low stress work, more than simple repetitive tasks or more than
 4 limited contact with others.¹ (AR 22, 54-74.) The contradictory opinions of other physicians
 5 provide specific, legitimate reasons for rejecting a physician's opinion. Tonapetyan v. Halter,
 6 242 F.3d 1144, 1150 (9th Cir. 2001). Nor is it of consequence here that the State agency
 7 reviewing physicians were not treating or examining physicians. A non-examining opinion may
 8 serve as substantial evidence when it is consistent with and supported by other independent
 9 evidence in the record. Lester, 81 F.3d at 830-31; Morgan, 169 F.3d at 600. Here, the State
 10 agency opinions are consistent with Dr. Lamm's treatment notes and with the evidence of her
 11 daily activities.

12 Plaintiff disputes the ALJ's rejection of Dr. Lamm's July 24, 2013 assessment and
 13 limitations, citing other of Dr. Lamm's progress notes that are more negative. (AR 345, 348,
 14 369, 370, 373, 374, 391, 415, 420, 422, 425, 426, 427.) Some of these notes, however, were
 15 mixed, with notations of improvement and mild impairment. It is the responsibility of the ALJ to
 16 resolve conflicts in the medical evidence. Andrews, 53 F.3d at 1039. Where the ALJ's
 17 interpretation of the record is reasonable and supported by substantial evidence as is the case
 18 here, it should not be second-guessed. Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir.
 19 2001).

20 The ALJ did not err in rejecting Dr. Lamm's July 24, 2013 assessment of Plaintiff. No
 21 other treating, consulting or reviewing physician found Plaintiff precluded from all work.

22 2. Dr. Deaver

23 State agency reviewing physician Dr. David Deaver, Ph.D., opined that Claimant is
 24 "capable of following easy 1, 2 step directions." (AR 69.) Plaintiff contends that the ALJ failed
 25 to give a reason for rejecting the "easy 1, 2 step directions" limitation and conflated that specific
 26 limitation into "simple repetitive tasks." (JS 5.) Plaintiff also contends that the ALJ erred by not
 27

28 ¹ As noted below, one reviewer restricted Plaintiff to "easy 1, 2 step directions."

1 including the easy 1, 2 step directions limitation in Plaintiff's RFC or in the questioning of the
2 VE. The Court agrees that the ALJ erred.

3 Plaintiff has not characterized the record accurately. In the record, there is a section
4 entitled, "Findings of Facts and Analysis of Evidence." (AR 63-64.) This section states that
5 Claimant's alleged subjective limitations are more limiting than the objective evidence supports.
6 (AR 63.) It further states, "Although she does have severe depression, it appears that the
7 claimant would be capable of simple, routine non-stressful work as it does appear that her
8 mental status has improved overall and her subjective reports of limitations are not fully
9 supported by objective evidence in file." (AR 63-64.) (Emphasis added.) Dr. Deaver signed off
10 on the report on June 5, 2013.² (AR 65.) Plaintiff does not acknowledge that Dr. Deaver
11 signed off on the limitation to "simple routine non-stressful work."

12 Dr. Deaver, however, added to his explanation, "See MRFC for additional limitations."
13 (AR 65.) In the accompanying Mental Residual Functional Capacity Assessment also dated
14 June 5, 2013 (AR 68-69), Dr. Deaver indicated Plaintiff did not have understanding and
15 memory limitations, and was not significantly limited in carrying out very short and simple
16 instructions. (AR 68.) He found Plaintiff to be only moderately limited in the ability to carry out
17 detailed instructions and to maintain attention and concentration for extended periods. (AR
18 68.) He also found that Plaintiff had the ability to make simple work-related decisions and to
19 complete a normal work day and work week without interruptions from psychological based
20 symptoms. (AR 68.) Dr. Deaver concluded that Claimant "would likely need a low stress
21 environment without a great deal of contact with others but is capable of following easy 1, 2
22 step directions." (AR 69.) (Emphasis added.)

23 Neither the ALJ nor the Commissioner acknowledge that Dr. Deaver embraced both
24 simple, routine non-stressful work and "easy step 1, 2 directions." These two limitations are not
25

26 ² The record was unclear as to the author of the report at AR 63-64. The Court ordered the
27 Commissioner to clarify its authorship. (Dkt. 16.) The Commissioner responded that the author
28 was a disability analyst but that Dr. Deaver signed off on the report. (Dkt. 17.) Although the
Court provided Plaintiff with the opportunity to submit a reply, Plaintiff did not do so.

1 the same, as discussed below. There also appears to be tension between Dr. Deaver's opinion
 2 that Plaintiff was moderately limited in carrying out detailed instructions and the easy 1, 2 step
 3 directions limitation. (AR 68-69.) The ALJ has the responsibility to resolve ambiguities in the
 4 record. Andrews, 53 F.3d at 1039. The ALJ also has a duty to develop the record fully and
 5 fairly, which is triggered when the evidence is ambiguous. Mayes v. Massanari, 276 F.3d 453,
 6 459-60 (9th Cir. 2001). The ALJ here failed to recognize and resolve important ambiguities or
 7 inconsistencies in Dr. Deaver's opinion. The ALJ erred.

8 The Commissioner contends that the Ninth Circuit case of Stubbs-Danielson v. Astrue,
 9 539 F.3d 1169, 1173-74 (9th Cir. 2008), governs here. Stubbs held that an ALJ may
 10 synthesize and translate mental limitations into an RFC restriction to simple, repetitive, and
 11 routine tasks. Id.; see also Turner v. Comm'r of Soc Sec., 613 F.3d 1217, 1223 (9th Cir. 2010)
 12 (marked limitations in social functioning synthesized into an RFC for work without public
 13 contact). Here, the ALJ assessed a medium work RFC "except for any work involving more
 14 than simple repetitive tasks; any public contact; or more than occasional peer contact." (AR
 15 18.) (Emphasis.) The Commissioner contends that the ALJ here fairly synthesized all the
 16 evidence, including the simple, routine non-stressful work limitation, into a "simple repetitive
 17 tasks" RFC limitation.

18 The problem with the Commissioner's reliance on Stubbs here is that there is a material
 19 difference between "simple, repetitive tasks" and "easy 1, 2 step directions." In the Ninth
 20 Circuit, a limitation to one and two step tasks is inconsistent with jobs requiring Level Two
 21 reasoning. Rounds v. Comm'r of Soc. Sec. Admin., 807 F.3d 996, 1002-04 (9th Cir. 2015). A
 22 limitation to simple, routine tasks by contrast is consistent with jobs requiring Level Two
 23 reasoning. See, e.g., Torrez v. Astrue, 2010 WL 2555847, at *9 (E.D. Cal. June 21, 2010).
 24 Thus, the ALJ's simple, repetitive tasks RFC limitation is consistent with Dr. Deaver's "simple,
 25 routine non-stressful work" opinion (AR 63) but plainly inconsistent with his "easy 1, 2 step
 26 directions" limitation which the ALJ decision never mentions. The ALJ necessarily rejected the
 27 latter limitation without any explanation as required by Social Security regulations. SSR 96-8p,
 28 at *7, 1996 WL 374184 ("If the RFC assessment conflicts with an opinion from a medical

1 source, the adjudicator must explain why the opinion was not adopted”); 20 C.F.R. §
 2 404.1527(e)(2); see also Dale v. Colvin, 823 F.3d 941, 944-46 (9th Cir. 2016). This too was
 3 error.³

4 The ALJ’s error, moreover, was not harmless. At the fifth step of the sequential process,
 5 the ALJ’s hypothetical posed to the VE only asked if there were jobs in the national economy
 6 that someone limited to simple, repetitive tasks could perform. (AR 48.) The VE answered
 7 affirmatively and identified numerous jobs requiring Level Two or Level Three reasoning levels.
 8 (AR 23-24.) The only job identified that required only Level One reasoning is a housekeeper
 9 job that is inapplicable because it may require more contact with others than the ALJ’s RFC
 10 permits. See Dictionary of Occupational Titles (“DOT”) 323.687-014, 1991 WL 672783, which
 11 requires a housekeeper to render personal assistance to patrons. The ALJ’s RFC limits
 12 Plaintiff to no public contact. (AR 18.) Cases have found an inconsistency between the DOT
 13 description of the cleaner job and a limitation to no public contact. See e.g., Pardue v. Astrue,
 14 2011 WL 5520301, at *4-5 (C.D. Cal. Nov. 14, 2011) (reversal because of no explanation of
 15 apparent conflict). The Commissioner argues that some cleaner jobs may not require public
 16 contact but the ALJ did not ask the VE to explain the apparent conflict between the VE
 17 testimony and the DOT requirement of rendering assistance to patrons, as the ALJ was
 18 required to do. Zavalin v. Colvin, 778 F.3d 842, 846 (9th Cir. 2014); Tommasetti v. Astrue, 533
 19 F.3d 1035, 1042 (9th Cir. 2008). Indeed, the VE here did not even appear to be aware that

21
 22 ³ The Commissioner tries to overcome the ALJ’s error by arguing the ALJ’s RFC is supported
 23 by Plaintiff’s daily activities. The Commissioner, however, fails to establish that any of those
 24 activities require more than one or two steps. Dr. Deaver, moreover, as a reviewing physician,
 would have been aware of these activities and nonetheless assessed an “easy 1, 2 step
 directions” limitation.

25 The Commissioner also argues that Plaintiff’s past work as a systems analyst and claims
 26 examiner (AR 22) supports the ALJ’s RFC. The ALJ, however, did not offer Plaintiff’s past work
 27 as an explanation for rejecting Dr. Deaver’s “easy 1, 2 step directions” limitation and this Court
 28 is constrained to review only the reasons the ALJ asserts. Connett v. Barnhart, 340 F.3d 871, 874
 (9th Cir. 2003). Again, Dr. Deaver was aware of Plaintiff’s work and nonetheless assessed an
 “easy 1, 2 step directions” limitation.

1 rendering assistance to patrons is public contact. (AR 51.) The Court cannot accept from the
2 Commissioner facts and reasons the ALJ and VE must provide. Connett, 350 F.3d at 874.

3 Thus, the ALJ's failure to resolve the ambiguities and inconsistencies in Dr. Deaver's
4 opinions and to address and explain his rejection of Dr. Deaver's easy 1, 2 step directions
5 limitation means that both the ALJ's RFC and his step five determination are not supported by
6 substantial evidence. The ALJ's nondisability opinion is not supported by substantial evidence
7 nor free of legal error.

8 **ORDER**

9 IT IS HEREBY ORDERED that Judgment be entered reversing the decision of the
10 Commissioner of Social Security and remanding this case for further proceedings in
11 accordance with this Memorandum Opinion and Order and with law.

12
13 DATED: September 27, 2016

/s/ John E. McDermott
JOHN E. MCDERMOTT
UNITED STATES MAGISTRATE JUDGE